STATE OF MICHIGAN

COURT OF APPEALS

JESSICA LIN SHAFFER, Plaintiff-Appellant,	UNPUBLISHED April 30, 2013
v	No. 312628 Arenac Circuit Court
KYLE E. ARQUETTE, Defendant-Appellee.	LC No. 11-011673-DS

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right the order of the circuit court denying plaintiff's motion for change of domicile. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant have a minor child together, JA (DOB 10/24/08). On April 16, 2012, plaintiff filed a motion for change of domicile from Michigan to Florida, alleging a lack of support by defendant and arguing that it was in the child's best interest to relocate to Florida with plaintiff because she served as the child's sole caregiver. Defendant objected to the motion and asserted that he exercised regular parenting time with the child.

An initial hearing on plaintiff's motion was held on May 3, 2012. At the hearing, the trial court found that there was no custody or parenting time order in place and, after discussing the matter with the parties, ordered joint physical and legal custody of the minor to the parties and formalized their current, informal parenting time arrangement. An order establishing the custody and parenting time arrangement was entered on May 30, 2012.

At the conclusion of a second hearing on plaintiff's motion for change of domicile, the court issued an opinion from the bench finding that plaintiff had failed to carry her burden of showing by a preponderance of the evidence that the change of domicile was warranted. Accordingly, an order denying plaintiff's motion for change of domicile was entered, and this appeal followed.

II. STANDARD OF REVIEW

A trial court's decision on a motion for change of domicile is reviewed for an abuse of discretion. *McKimmy v Melling*, 291 Mich App 577, 581; 805 NW2d 615 (2011). To the extent that this issue involves the interpretation of statutes and court rules, we review such questions de novo. *Wexford Med Group v Cadillac*, 474 Mich 192, 202; 713 NW2d 734 (2006); *Haliw v Sterling Heights*, 471 Mich 700, 704; 691 NW2d 753 (2005).

III. ANALYSIS

Plaintiff alleges two errors on the part of the trial court. First, plaintiff argues that the trial court erred by not granting her motion for change of domicile. We disagree.

Motions for change of domicile are governed by MCL 722.31, which provides in relevant part:

> (1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.
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> (2) A parent's change of a child's legal residence is not restricted by subsection (1) if the other parent consents to, or if the court, after complying with subsection (4), permits, the residence change. *This section does not apply if the order governing the child's custody grants sole legal custody to 1 of the child's parents*. [Emphasis added.][1]

On appeal, plaintiff asserts that, at the time she filed her motion for change of domicile, she had sole legal and physical custody of the minor in question and therefore was not subject to MCL 722.31, by virtue of the exception set forth in MCL 722.31(2). This assertion, however, is directly contradicted by the lower court record, which reveals that, at the time plaintiff filed her motion, (a) the January 12, 2012 Judgment prohibited a change in the minor's domicile without the approval of the trial court; and (b) there existed no "order . . . grant[ing] sole legal custody to 1 of the child's parents." MCL 722.31(2). The first and only custody order issued concerning the minor in question was the May 30, 2012 order granting joint physical and legal custody of the minor to both plaintiff and defendant. The issuance of this order occurred almost four months before the entry of the order denying plaintiff's motion for change of domicile, and almost three months before the hearing on the substance of plaintiff's motion. Thus, at the time plaintiff's motion was heard and decided, the parties had joint physical and legal custody.

[1] Subpart (4) of MCL 722.31 sets forth factors that the trial court must consider in evaluating a request to change the minor's legal residence.

Therefore, because no order had established that plaintiff had sole legal custody of the minor in question at the time plaintiff filed her motion for change of domicile, the lower court did not err by considering the factors of MCL 722.31(4). See *Rittershaus v Rittershaus*, 273 Mich App 462, 465; 730 NW2d 262 (2007). As plaintiff does not challenge the trial court's findings that these factors weighed against the grant of her motion, we do not address the trial court's findings in detail. See *DeGeorge v Warheit*, 276 Mich App 587, 596; 741 NW2d 384 (2007) (This Court will not generally consider issues not argued by appellant).

Second, plaintiff argues that the trial court's May 30, 2012 custody order was not entered in compliance with MCR 2.602(B), and is null and void. We disagree.

MCR 2.602(B) reads as follows:

> (B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:
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> (1) The court may sign the judgment or order at the time it grants the relief provided by the judgment or order.
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> (2) The court shall sign the judgment or order when its form is approved by all the parties and if, in the court's determination, it comports with the court's decision.
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> (3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.
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> (a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.
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> (b) Objections regarding the accuracy or completeness of the judgment or order must state with specificity the inaccuracy or omission.
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> (c) The party filing the objections must serve them on all parties as required by MCR 2.107, together with a notice of hearing and an alternate proposed judgment or order.
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> (4) A party may prepare a proposed judgment or order and notice it for settlement before the court.

Plaintiff argues that the trial court entered a custody order without approval of either party and without a seven day notice pursuant to MCR 2.602(B). However, the lower court record indicates, the trial court issued a notice of presentment on May 4, 2012 to both parties providing the parties with seven days to object to the proposed custody order. The notice of presentment states that the proposed custody order "has been presented to the Court for signature and entry. If you believe that the attached is an inaccurate representation of what was ordered by the judge at your hearing, you must file a written objection . . . within 7 days of the date of mailing" and contained a proof of service. Although the notice of presentment does not explicitly state that *a party* has presented the proposed order to the Court, and the notice was served by the Court rather than by a party, we conclude that the notice was sufficiently clear to comply with MCR 2.602(B)(3) and give plaintiff notice that the proposed order would be signed if she did not object within seven days of mailing. To the extent that the procedure followed arguably amounts to a procedural defect, such a defect, standing alone, will not cause us to set aside the child custody order. See *In re Kirkwood*, 187 Mich App 542, 546; 468 NW2d 280 (1991) (declining to set aside a termination order for procedural defect when respondent's due process rights were not violated). Plaintiff did not object to the proposed order. As such, the final custody order issued on May 30, 2012 was in compliance with MCR 2.602(B)(3), and is valid as entered.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra